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Appeal from Circuit Court, Southampton County.

Suit by the Surry Lumber Company against J. F. Wellons and others. From a decree of dismissal on demurrer, complainant appeals. Affirmed.

Williams & Tunstall and *J. N. Sebrell, Jr.*, all of Norfolk, for appellant.

Lewis & Harris and *J. G. Martin*, of Norfolk, for appellees.

SUSSEX COUNTY *v.* JARRATT et al.

March 17, 1921.

[106 S. E. 384.]

1. Taxation (§ 498*)—Equity May Restrain Unauthorized Assessment for Preceding Years.—Equity had jurisdiction to restrain county from assessing taxes for preceding years after expiration of period during which levy thereon could be made had expired, notwithstanding Code 1919, § 2389, giving taxpayer the right to apply to the circuit court for relief where aggrieved by assessment, since the remedy under such statute exists only if an assessment has been made.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 107.]

2. Taxation (§ 418*)—Bank Stock Held Not Assessed Where Assessment Did Not Specify Stockholders.—Assessment specifying name and place of bank, amount assessed, amount levied, and total levy for county and district, without specifying the names of the stockholders, the number of shares of stock held by each stockholder, the value of such stock, and the amount of taxes due, as required by Code 1904, § 1040a, for assessment of bank stock, held not an assessment of such stock but the assessment of the bank's capital stock.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 104, 105.]

3. Taxation (§ 386*)—Shares of Stock Taxable though Capital Is Invested in Nontaxable Securities.—The shares of stock of a bank are distinct and different from its capital and may be taxed though the capital itself be invested in nontaxable securities.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 104.]

4. Taxation (§ 319 (1)*)—Assessments Must Be Made in Manner Prescribed by Law.—Officers must make their assessments in the manner prescribed by law.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 91.]

5. Taxation (§ 301 (1)*)—Assessment Must Rest upon Proper Levy.
—Every assessment must rest upon a proper levy of a tax, and if there is no levy there can be no assessment.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Taxation (§§ 295, 309*)—Difference Between "Levy" and "Assessment" Stated.—The "levy" of taxes is a legislative function and declares the subject and rate of taxation, while "assessment" is quasi judicial and consists in making a list of the taxpayer's property and fixing its valuation for appraisement.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Assessment; Levy.]

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 91, 92.]

7. Taxation (§ 406*)—Assessment for Omitted Years Unauthorized Where There Was No Levy during Such Years.—Commissioner of revenue could not assess shares of bank stock for taxes for previous years under Code 1904, § 508, where there had been no levy on such shares of stock during such previous years.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 79.]

8. Taxation (§ 300*)—Levy of Tax against "Real and Personal Property" Held Not a Levy against Shares of Bank Stock.—Board of supervisors' order that a tax be levied against "real, personal property of the county" held not a levy on shares of bank stock under Code 1904, § 1904a, § 1040a, providing for taxation of bank stock.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Personal Property; Real Property.]

9. Statutes (§ 245*)—Statute Construed in Favor of Taxpayer against Government.—Statutes imposing taxes are to be construed most strongly against the government and in favor of the citizen, and are not to be extended by implication beyond the clear import of the language used.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 771.]

10. Taxation (§ 300*)—Court Not Empowered to Make Levy Omitted in Previous Years.—The court has no power to make a levy for taxes omitted in previous years, since neither the commissioner of revenue, nor the board of supervisors, having failed to order levy, had power to make levy for such back taxes.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 78, 79.]

11. Taxation (§ 300*)—Board of Supervisors Not Empowered to Make Levy Omitted during Previous Years.—Board of supervisors, having failed to order a levy on bank stock for certain years, had no authority to order a levy for taxes for such years in succeeding years.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 78, 79.]

Appeal from Circuit Court, Sussex County.

Consolidated suits by B. F. Jarratt and by S. B. Grant against

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the County of Sussex. Decree for complainants, and defendant appeals. Affirmed.

Thos. H. Howerton, of Waverly, and *Buford & Peterson*, of Lawrenceville, for appellant.

Geo. Bryan, of Richmond, and *Wm. B. Cocke*, of Stony Creek, for appellees.

STANDARD ICE CO., Inc. *v.* LYNCHBURG
DIAMOND ICE FACTORY.

March 17, 1921.

[106 S. E. 390.]

1. Sales (§ 71 (4)*)—Agreement to Deliver "Full Capacity of the Plant" Held to Have Reference to Daily Capacity.—A contract for the sale and purchase of ice, requiring plaintiff to furnish "the full capacity of the plant" when desired by defendant, held to require plaintiff only to furnish full capacity daily, and not to contemplate weekly capacity, and defendant could not demand on any one day any more than the capacity of the plant on that day.

2. Contracts (§ 155*)—Clause Construed against Party in Whose Favor It Was Inserted.—If there is a doubt as to the construction of a certain feature of a contract, it should be resolved against the party in whose favor it was inserted, since such language should be regarded as that of such party, but such rule should not be invoked where the language of the contract is clear.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 400.]

3. Contracts (§ 170 (1)*)—Sales (§ 71 (1)*)—Construction by Parties Persuasive; Seller Could Waive Strict Compliance with Contract without Losing Right to Invoke Subsequently.—Where ice company agreed to sell ice to defendant up to a certain amount on any particular day on notice, it did not lose the right to invoke a strict compliance with the contract, whenever it saw fit to do so at a later date, by reason of having delivered more ice than it was required to do when demanded by the defendant, although a course of dealing will place a practical construction on a contract in cases where the rights of the parties are doubtful.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 401.]

4. Contracts (§ 156*)—Ejusdem Generis Rule to Be Sparingly Applied.—The ejusdem generis rule is to be sparingly and cautiously applied.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 535.]

5. Contracts (§ 156*)—Statutes (§ 194*)—"Ejusdem Generis Rule" Defined.—The ejusdem generis rule, which applies alike to statutes

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.